

Senate Bill 114

By: Senators Shafer of the 48th, Williams of the 19th, Johnson of the 1st, Rogers of the 21st, Pearson of the 51st and others

AS PASSED

AN ACT

To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, so as to change certain provisions relating to points given to disabled veterans taking examinations for licensing; to provide that certain time periods shall have passed after completing the terms and conditions of a sentence for certain criminal convictions before making an application for appraiser classification or approval to the Georgia Real Estate Appraiser Board; to provide for additional criminal offenses for which the board may deny a classification or approval; to change provisions relating to lapsed appraisal classifications; to permit the board to provide certain educational materials to consumers; to provide that certain time periods shall have passed after completing the terms and conditions of a sentence for certain criminal convictions before making an application for licensure to the Georgia Real Estate Commission; to provide for additional criminal offenses for which the commission may deny a license; to change the term "in-class hour" to "instructional hour"; to change the number of instructional hours for a broker prelicense course of study; to change the required number of continuing education hours for each year of the renewal period established by the commission; to provide for certain provisions relating to persons on active military duty or serving in the General Assembly; to permit the commission to provide certain educational materials to consumers; to provide that brokers are entitled to trust funds only after consummation or termination of the transaction; to permit a licensee to deal directly with another licensee's client under certain circumstances; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 43 of the Official Code of Georgia Annotated, relating to professions and business, is amended by revising paragraphs (2) and (3) as follows of Code Section 43-1-9, relating to point credit for veterans taking examinations given by professional licensing boards, as follows:

"(2) Any applicant who is a disabled veteran and who served on active duty in the armed forces of the United States or on active duty in a reserve component of the armed forces of the United States, including the National Guard, during wartime or during any conflict when military personnel were committed by the President of the United States shall be entitled to a credit of five points if the disability was for an injury or illness incurred in the line of duty and such disability is officially rated at less than 10 percent at the time of taking the examination. Such points shall be added by the person grading the examination to the grade made by the applicant in answering the questions propounded in any such examination; and

(3) Any applicant who is a disabled veteran who served on active duty in the armed forces of the United States or on active duty in a reserve component of the armed forces of the United States, including the National Guard, during wartime or during any conflict when military personnel were committed by the President of the United States shall be entitled to a credit of ten points if the disability was for an injury or illness incurred in the line of duty and such disability is officially rated at 10 percent or above at the time of taking the examination. Such points shall be added by the person grading the examination to the grade made by the applicant in answering questions propounded in any such examination."

SECTION 2.

Said title is further amended in Chapter 39A, relating to real estate appraisers, by revising Code Section 43-39A-8, relating to the establishment of appraiser classifications complying with federal law, continuing education courses required for renewal of classification, and approval of instructors, by adding two new subsections to read as follows:

"(a.1) In order to qualify to become an applicant for an appraiser classification or approval, an individual shall:

- (1) Have attained the age of 18 years;
- (2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-39A-9;
- (3) Have attained the level of education that the board may establish through its rules and regulations;
- (4) Have complied fully with the requirements of subsection (b) of Code Section 43-39A-14 regarding any criminal convictions;
- (5) Furnish evidence of completion of the instructional hours in any course of study the board may require through its rules and regulations; and

(6) Stand and pass an examination administered by or approved by the board covering generally the matters confronting real property appraisers after completing the requirements of paragraph (5) of this subsection.

Failure to meet any of these requirements shall be grounds for denial of classification or approval without a hearing."

"(f) The board may prepare and distribute to appraisers under this chapter educational material deemed of assistance in the conduct of their business. The board may prepare and distribute to the public educational material deemed of assistance to consumers engaging in business in real estate appraisals with persons classified under this chapter."

SECTION 3.

Said title is further amended in Chapter 39A by revising subsection (f) of Code Section 43-39A-11, relating to fees for examination, activation, and renewal and reactivation of lapsed or inactive appraiser classification, as follows:

"(f) Any resident appraiser whose appraiser classification lapses for failure to pay a renewal fee may reactivate that appraiser classification within two years of the date of its lapsing by paying the total amount of all renewal fees and late charges which would have been due during the period when the appraiser classification was lapsed plus a reactivation fee. If any resident appraiser allows an appraiser classification to lapse for a period longer than two years due solely to a failure to pay a renewal fee, the resident appraiser may have that appraiser classification reinstated by paying the total amount of all renewal fees and late charges which would have been due during the period when the appraiser classification was lapsed plus a reactivation fee and by successfully completing any educational course or courses which the board may require. Any resident appraiser whose appraiser classification has lapsed for longer than five years and who seeks to have that appraiser classification reinstated shall requalify as an original applicant as set forth in Code Section 43-39A-8. Any nonresident appraiser whose appraiser classification lapses for failure to pay a renewal fee may reactivate that appraiser classification by paying the fee required of an original applicant if such nonresident appraiser has maintained an active classification in his or her state of residence during the period that his or her classification lapsed. The board may refuse to renew an appraiser classification if the appraiser has continued to perform real estate appraisal activities following the lapsing of that appraiser classification."

SECTION 4.

Said title is further amended in Chapter 39A by revising subsection (b) of Code Section 43-39A-14, relating to required conduct of applicants and refusal of classification, as follows:

"(b)(1) As used in this subsection, the term:

(A) 'Conviction' means a finding or verdict of guilty or a plea of guilty to a charge of a felony or any crime involving moral turpitude, regardless of whether an appeal of the conviction has been brought; a sentencing to first offender treatment without an adjudication of guilt pursuant to a charge of a felony or any crime involving moral turpitude; or a plea of nolo contendere to a charge of a felony or any crime involving moral turpitude.

(B) 'Felony' includes any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere.

(1.1) No person who has a conviction shall be eligible to become an applicant for a license or an approval authorized by this chapter unless such person has successfully completed all terms and conditions of any sentence imposed for such conviction; provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval; and provided that if such individual has a single conviction, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval.

(1.2) A person who has a conviction in a court of competent jurisdiction of this or any other state, district, or territory of the United States, or of a foreign country, shall be eligible to become an applicant for a licensure or an approval authorized by this chapter only if:

(A) Such person has satisfied all terms and conditions of any conviction such person may have had before making application for licensure or approval; provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval; and provided that if such individual has been convicted of a single felony or of a single crime of moral turpitude, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval;

(B) No criminal charges for forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, a felony, a sex offense, a probation violation, or a crime involving moral turpitude are pending against the person; and

(C) Such person presents to the commission satisfactory proof that the person now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

(2) Where an applicant for any classification or approval authorized by this chapter has been convicted in a court of competent jurisdiction of this or any other state, district, or territory of the United States or of a foreign country of the offense of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, or conspiracy to defraud or other like offense or offenses or has been convicted of a felony, a sex offense, a probation violation, or a crime involving moral turpitude, such conviction in itself may be a sufficient ground for refusal of a classification or approval. An applicant for any classification or approval authorized by this chapter who has been convicted of any offense enumerated in this paragraph may be issued a classification or approval by the board only if:

(A) The time periods identified in paragraph (1) of this subsection have passed since the applicant was convicted, sentenced, or released from any incarceration, whichever is later;

(B) No criminal charges are pending against the applicant; and

(C) The applicant presents to the board satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact real estate appraisal activity in such a manner as to safeguard the interests of the public."

SECTION 5.

Said title is further amended in Chapter 40, relating to real estate brokers and salespersons, by revising Code Section 43-40-8, relating to license requirements, as follows:

"43-40-8.

(a) In order to qualify to become an applicant for a community association manager's license, an individual shall:

(1) Have attained the age of 18 years;

(2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-40-9;

- (3) Be a high school graduate or the holder of a certificate of equivalency;
- (3.1) Have complied fully with the requirements of subsection (b) of Code Section 43-40-15 regarding any criminal convictions;
- (4) Furnish evidence of completion of at least 25 instructional hours in a community association manager's course of study approved by the commission; and
- (5) Stand and pass a real estate examination administered by or approved by the commission covering generally the matters confronting real estate brokers who provide community association management services and community association managers after completing the requirements of paragraph (4) of this subsection.

Failure to meet any of these requirements shall be grounds for denial of license without a hearing.

(b) In order to qualify to become an applicant for a salesperson's license, an individual shall:

- (1) Have attained the age of 18 years;
- (2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-40-9;
- (3) Be a high school graduate or the holder of a certificate of equivalency;
- (3.1) Have complied fully with the requirements of subsection (b) of Code Section 43-40-15 regarding any criminal convictions;
- (4) Furnish evidence of completion of at least 75 instructional hours in a salesperson's course of study approved by the commission; and
- (5) Stand and pass a real estate examination administered by or approved by the commission covering generally the matters confronting real estate brokers and salespersons after completing the requirements of paragraph (4) of this subsection.

Failure to meet any of these requirements shall be grounds for denial of license without a hearing.

(c) In order to qualify to become an applicant for a broker or associate broker's license, an individual shall:

- (1) Have attained the age of 21 years;
- (2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-40-9;
- (3) Be a high school graduate or the holder of a certificate of equivalency;
- (3.1) Have complied fully with the requirements of subsection (b) of Code Section 43-40-15 regarding any criminal convictions;

- (4) Have maintained a license in active status for at least three of the five years immediately preceding the filing of an application to become a broker;
- (5) Furnish evidence of completion of 60 instructional hours in a broker's course of study approved by the commission, provided that if licensed as a community association manager, the applicant shall furnish evidence of completion of an additional 75 instructional hours in courses or a course of study approved by the commission; and
- (6) Stand and pass a real estate examination administered by or approved by the commission covering generally the matters confronting real estate brokers after completing the requirements of paragraph (5) of this subsection and after serving at least two years of active licensure.

Failure to meet any of these requirements shall be grounds for denial of license without a hearing.

(d) Upon being issued an original salesperson's license, each salesperson shall be required to furnish the commission, within one year of the issuance of a license, evidence of satisfactory completion of a course of study of at least 25 instructional hours approved by the commission. As a condition of satisfactory completion of this course, the licensee shall stand and pass an examination that the commission approves and that covers the subject matter contained in the course. The license of any salesperson who fails to complete satisfactorily in a timely manner the course provided for in this subsection shall lapse, and the salesperson's wall certificate of licensure and pocket card shall immediately be surrendered to the commission. Any salesperson whose license lapses for failure to complete satisfactorily an approved 25 instructional hour course may reinstate the license in the following manner:

- (1) Any salesperson who has enrolled in any approved 25 instructional hour course within one year of the issuance of an original license, has paid all required fees for the course, and has not completed all in-class sessions, required exercises, or examinations for any reason may reinstate the license by completing the course within six months of the lapsing of the license; or
 - (2) Any salesperson who fails to reinstate a lapsed license as provided in paragraph (1) of this subsection shall complete 25 instructional hours in a course of study approved by the commission and pay such penalty fees as the commission may require through its rules and regulations before making application to reinstate such license.
- (e) Except those individuals actively licensed on January 1, 1980, each applicant for renewal of an active license shall furnish to the commission before renewing a license evidence of satisfactorily completing a continuing education course or courses approved

by the commission. The length of the course or courses taken by licensees to meet this requirement of continuing education shall total at least six instructional hours for each year of the renewal period established by the commission. The commission shall not require the passing of an examination to meet this requirement. Continuing education courses shall be provided by all educational or duly authorized instructional organizations teaching real estate licensing courses. No licensee whose license has been placed on inactive status shall be allowed to reactivate unless the provisions of this subsection and subsection (g) of Code Section 43-40-12 are met. Individuals serving on active duty in the armed forces of the United States or in the General Assembly may choose not to meet the continuing education requirements of this subsection while on active duty or during their terms of office. Members of the armed forces or the General Assembly who choose to exercise this temporary exemption option and whose term of active duty or of office exceeds two years shall be required to complete the 25 instructional hour course referenced in subsection (d) above within six months of the conclusion of their active duty or term of office.

(f) Instructors in all of the approved courses shall be approved by the commission and, where the commission deems necessary, receive any special instruction the commission may require.

(g) Failure to complete any of the educational requirements as provided in this Code section shall be grounds for denial of a license or denial of renewal of a license without further hearing. No fees or portion of fees paid shall be refunded if a licensee fails to meet the continuing education provisions of subsections (d) and (e) of this Code section or any other provisions of this chapter.

(h) The commission may prepare and distribute to licensees under this chapter educational material deemed of assistance in the conduct of their business. The commission may prepare and distribute to the public educational material deemed of assistance to consumers engaging in business in real estate transactions with persons licensed under this chapter.

(i) The commission, through its rules and regulations, shall establish standards for the approval of schools and instructors to offer the education courses required by this chapter. Each approved school shall comply with Code Sections 43-40-15 through 43-40-32. Each approved school shall designate an individual approved by the commission to act as its director and such designated individual shall be responsible for assuring that the approved school complies with the requirements of this chapter and rules and regulations promulgated under this chapter. An approved school shall authorize its director to bind the school to any settlement of a contested case before the commission as defined in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The commission, through its

rules and regulations, shall establish standards for the offering of the prelicense education courses required by this chapter by methods of instruction, which it deems to be educationally sound, other than in-class instruction. The commission, through its rules and regulations, may establish standards for the offering of continuing education courses required by this chapter by methods of instruction, which it deems to be educationally sound, other than in-class instruction."

SECTION 6.

Said title is further amended in Chapter 40 by revising subsections (f) and (g) of Code Section 43-40-12, relating to inactive status of a license, as follows:

"(f) Any licensee whose license lapses for failure to pay a renewal fee may reinstate that license within two years of the date of its lapsing by paying the total amount of all renewal fees and late charges which would have been due during the period when the license was lapsed plus a reinstatement fee. If any licensee who has passed an examination administered by or approved by the commission allows a license to lapse for a period longer than two years and less than five years due solely to a failure to pay a renewal fee, the licensee may reinstate that license by paying the total amount of all renewal fees and late charges which would have been due during the period when the license was lapsed plus a reinstatement fee and by successfully completing any educational course or courses which the commission may require. Any licensee whose license has lapsed for longer than five years for failure to pay a renewal fee and who seeks to reinstate that license shall meet the education and examination requirements for that license as set forth in Code Section 43-40-8. Any nonresident licensee whose license lapses for failure to pay a renewal fee may reactivate that license by paying the fee required of an original applicant if such nonresident licensee has maintained an active license in his or her state of residence during the period that his or her license lapsed and has met its continuing education requirements. Any licensee whose license has lapsed for longer than one year and who is not subject to the continuing education requirements of subsection (e) of Code Section 43-40-8 and who reinstates such license under the terms of this subsection shall thereafter be subject to the continuing education requirements of subsection (e) of Code Section 43-40-8.

(g) Any real estate broker who does not wish to be actively engaged in the brokerage business or any licensee who is temporarily not actively engaged on behalf of a broker may continue a license by making a written request within 30 days of ceasing work that the license be placed on inactive status. Any licensee whose license has been placed on an inactive status shall not engage in the real estate brokerage business except in connection

with property owned by the licensee. To reinstate a license held on inactive status, a licensee other than a broker shall secure the signature of the broker for whom the licensee wishes to act; and a broker shall make application to the commission prior to resuming brokerage activity. Any individual licensee who seeks to activate a license which has been on inactive status shall first meet the continuing education requirement of subsection (e) of Code Section 43-40-8 which would have been required had such person been on active status unless such person maintained an active license in another state that has continuing education requirements while such licensee's license was on inactive status in Georgia."

SECTION 7.

Said title is further amended in Chapter 40 by revising subsection (b) of Code Section 43-40-15, relating to the grant, revocation, or suspension of licenses, as follows:

"(b)(1) As used in this Code section, the term:

(A) 'Conviction' means a finding or verdict of guilty or a plea of guilty to a charge of a felony or any crime involving moral turpitude, regardless of whether an appeal of the conviction has been brought; a sentencing to first offender treatment without an adjudication of guilt pursuant to a charge of a felony or any crime involving moral turpitude; or a plea of nolo contendere to a charge of a felony or any crime involving moral turpitude.

(B) 'Felony' includes any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere.

(1.1) No person who has a conviction shall be eligible to become an applicant for a license or an approval authorized by this chapter unless such person has successfully completed all terms and conditions of any sentence imposed for such conviction; provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval; and provided that if such individual has a single conviction, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval.

(1.2) A person who has a conviction in a court of competent jurisdiction of this or any other state, district, or territory of the United States, or of a foreign country, shall be eligible to become an applicant for a licensure or an approval authorized by this chapter only if:

(A) Such person has satisfied all terms and conditions of any conviction such person may have had before making application for licensure or approval; provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval; and provided that if such individual has been convicted of a single felony or of a single crime of moral turpitude, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval;

(B) No criminal charges for forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, a felony, a sex offense, a probation violation, or a crime involving moral turpitude are pending against the person; and

(C) Such person presents to the commission satisfactory proof that the person now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

(2) Where an applicant for any license or approval authorized by this chapter has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other like offense or offenses or has been convicted of a felony, a sex offense, a probation violation, or a crime involving moral turpitude and has been convicted thereof in a court of competent jurisdiction of this or any other state, district, or territory of the United States or of a foreign country such conviction in itself may be sufficient ground for refusal of a license or approval authorized by this chapter. An applicant for licensure as an associate broker or a broker who has been convicted of any offense enumerated in this paragraph may be licensed by the commission as an associate broker or a broker only if:

(A) At least ten years have passed since the applicant was convicted, sentenced, or released from any incarceration, whichever is later;

(B) No criminal charges are pending against the applicant; and

(C) The applicant presents to the commission satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public."

SECTION 8.

Said title is further amended in Chapter 40 by revising subsection (e) of Code Section 43-40-20, relating to when a broker is entitled to commission or fee, as follows:

"(e) A broker shall not be entitled to any part of the earnest money, security deposit, or other trust funds paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated."

SECTION 9.

Said title is further amended in Chapter 40 by revising paragraph (14) of subsection (b) of Code Section 43-40-25, relating to unfair trade practices, as follows:

"(14) Negotiating a sale, exchange, or lease of real estate directly with an owner, a lessor, a purchaser, or a tenant if the licensee knows that such owner or lessor has a written outstanding listing contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker or that such purchaser or tenant has a written outstanding exclusive brokerage agreement with another broker, unless the outstanding listing or brokerage agreement provides that the licensee holding such agreement will not provide negotiation services to the client;"

SECTION 10.

All laws and parts of laws in conflict with this Act are repealed.